



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING



DAN WYANT
DIRECTOR

April 27, 2011

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. John C. Beatty, III
Diamond Chrome Plating, Inc.
604 South Michigan Avenue
P.O. Box 557
Howell, Michigan 48844

Dear Mr. Beatty:

SUBJECT: Compliance Communication Regarding Site Investigation Work at the
Diamond Chrome Plating Facility, 604 South Michigan Avenue,
Howell, Livingston County;
Judicial Consent Decree No. 03-1862-CE
Site ID: 47000202

The Michigan Department of Environmental Quality (DEQ), Remediation Division (RD), Lansing District Office, are replying to Diamond Chrome Plating's (DCP's) correspondence dated March 10, 2011, prepared by your consultant, BB&E LLC. The correspondence related to DCP performing off-property site investigation work prior to DEQ's approval of a work plan and referenced a proposed schedule as adequate notification to perform off-property groundwater sampling.

The purpose of this correspondence is to remind DCP of its notification obligations pursuant to the above referenced consent decree in order to avoid future misunderstandings between the parties.

Under Section 20114(2) of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, and Administrative Rules, DCP must abide by provisions set forth in the above referenced Judicial Consent Decree (JCD). Pursuant to Section 6.6(e) of the JCD, the DEQ reviews and approves of work plans to meet performance objectives identified in Section 6.1 of the JCD.

On March 3, 2011, the DEQ and DCP representatives discussed DEQ's comments contained in our February 23, 2011, reply to a draft work plan submitted to the DEQ by DCP's consultant. The work plan was generally applicable to Section 2.0 of DCP's Catch Basin Monitoring Contingency Plan. During the conference call, DEQ staff agreed that DCP may decrease the scope of work in the revised work plan. The DEQ staff agreed with DCP that expedited field work would provide useful data for future site investigation work plans specified in the JCD. The DEQ staff did not agree that proposed work fell outside of the JCD and did not waive field work and sampling activity notification provisions under Sections 6.2 and 8.2 of the JCD.

On April 4, 2011, the DEQ approved the revised work plan referenced above that was received March 14, 2011. In our approval letter, DCP was reminded to notify DEQ staff of groundwater sampling activities pursuant to Section 8.2 of the above referenced JCD.

On April 11, 2011, DEQ staff sent an e-mail to DCP staff inquiring when field work for the approved work plan would commence. DCP replied via e-mail that the field work had been completed. DEQ staff replied to this e-mail that DCP violated notification requirements of the JCD. DCP staff stated in an e-mail that the March 14, 2011, work plan was a "courtesy copy" and that the field work was "not designed to fulfill a requirement of the JCD" and that the work was for "purposes of enhancing our site assessment model." DCP attached a copy of a letter dated March 10, 2011, drafted by its consultant, to the April 11, 2011, e-mail. The consultant's letter stated that: "only documents specified in the JCD require approval from the DEQ" and that the limited site investigation work plan was "outside of the JCD."

The DEQ did not receive a signed copy of this letter prior to the above referenced e-mail. Consequentially, the DEQ could not reply to avoid a continuing misunderstanding between DCP and the DEQ.

Section 6.2 of the JCD states the following: "In accordance with this Decree, Defendant shall assure that all work plans for conducting response activities are designed to achieve the performance objectives identified in Paragraph 6.1. Defendant shall develop each work plan and perform the response activities contained in each work plan with the requirements of this decree. These work plans shall provide for ten (10) days notice to the RD project coordinator prior to performance of site field work. Upon DEQ approval, each component of each work plan and any approved modifications shall be deemed incorporated into this Decree and made an enforceable part of this Decree. If there is a conflict between the requirements of this Decree and any DEQ approved work plan, the requirements of this Decree shall prevail unless the Parties agree to modify the Consent Decree in accordance with Section 12 (Modifications)."

Section 8.2 of the JCD states the following: "Defendant, or its consultants or subcontractors, shall provide the DEQ ten (10) days notice prior to any sampling activity to be conducted pursuant to this Decree to allow the DEQ Project Coordinator, or his or her authorized representative, the opportunity to take split of duplicate samples or to observe the sampling procedures. In circumstances where ten (10) days notice is not possible, Defendant, or its consultants or subcontractors, shall provide notice of the planned sampling activity as soon as possible to the DEQ Project Coordinator and explain why earlier notification was not possible. If the DEQ Project Coordinator concurs with the explanation provided, Defendant may forego the 10-day notification period for that particular sampling event."

Section 8.2 applies to the following work activities identified in DEQ approved work plans by DCP: catch basin monitoring sampling; storm sewer evaluation sampling; groundwater samples collected via monitoring wells or temporary wells in or out the building; surface water sampling; and soil and sediment samples.

Section 6.2 pertains to notification for field work approved in work plans. Field work includes storm sewer maintenance and repair, pilot testing, collection of groundwater elevation data, and installation of mitigation treatment systems if approved in a work plan.

Previously, DEQ staff has verbally requested that DCP staff inform the DEQ when storm water sampling under the approved Catch Basin Monitoring Plan is done. DCP staff has not provided notice for catch basin sampling events in 2011 and most of the sampling events in 2010. Catch basin monitoring is a sampling activity under the approved "Catch Basin Monitoring Plan" and is subject to the provisions of Section 8.2 of the JCD.

Recent correspondence by DCP indicates that DCP believes recent site work was "exempt" from notification requirements of the JCD without citing JCD to support its assertions. The DEQ is requesting that DCP be mindful of the structure of the JCD when proposing future work relevant to stipulated work plans and reports pursuant to applicable sections contained in the JCD, including approved work plans which are also enforceable under the JCD.

The DEQ recognizes that DCP is moving forward with regard to implementation of response activities to meet performance activities outlined in the JCD. DCP has continued to repair and maintain the leak proofed section of the City of Howell storm sewer to prevent infiltration of hazardous substances. DCP has resurveyed monitoring wells and collected groundwater elevation data to gain a better understanding of groundwater flow direction in relation to the City of Howell storm sewer system and has recently conducted limited off-site groundwater investigation work. Nevertheless, the DEQ can not verify whether or not DCP's response activities are technically sound if not notified by DCP to perform oversight pursuant to the JCD.

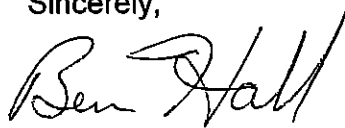
DCP is advised that Section 15, Stipulated Penalties, states the following: "Defendant shall be liable for stipulated penalties in the amounts set forth in Paragraphs 15.2 and 15.3 for failure to comply with the requirements of this Decree, unless excused under Section 10 (Delays in Performance, Violations, and force Majeure). Failure to Comply by Defendant shall include failure to deliver submissions and notifications, failure to perform response activities in accordance with DEQ-approved plans and this Decree, and failure to pay response activity costs and penalties in accordance with all applicable requirements of law and this Decree within the specified implementation schedules established by and approved under this Decree."

The DEQ expects that DCP will continue to perform response activities at the facility pursuant to provisions of the JCD as described above. We hope that this letter will prevent future misunderstandings regarding implementation of the JCD.

If you have questions regarding your obligations under the JCD, please contact Mr. Leslie E. Smith, III, at 517-241-0756; or smithl9@michigan.gov.

If you have questions regarding site work and work plans, please contact Ms. Rebecca Taylor at 517-335-6247; or taylorr@michigan.gov.

Sincerely,

A handwritten signature in black ink that reads "Ben Hall". The signature is fluid and cursive, with the first name "Ben" and last name "Hall" clearly distinguishable.

Ben Hall, District Supervisor
Lansing District Office
Remediation Division

bh/rt/cah

cc: Ms. Beth S. Gotthelf, Butzel Long
Mr. James Colmer, BB&E LLC
Ms. Carla Davidson, DEQ
Mr. Bill Yocum, DEQ
Mr. Brad Ermisch, DEQ
Ms. Kathleen Shirey, DEQ
Mr. Leslie E. Smith, III, DEQ
Ms Rebecca Taylor, DEQ